

Scott was a state actor to the extent Scott searched the box of coffee mugs and some papers *following* the arrest.

As both the Sixth Circuit Opinion (App. 5.) and the District Court Opinion (App. 23.) make clear, chronologically, Dickow completed the arrest alone and *before* Scott ever began searching through the box for his coffee mugs. Consistent with Sixth Circuit precedent, *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 311 (6th Cir., 2005), the Court held that because Scott was not involved in the arrest, he "cannot be held liable for constitutional violations arising out of the arrest" If the search was incident to arrest, as it clearly was, then Scott's participation in the search remains cloaked with qualified immunity.

Other circuits concur in this. In *Michalik v. Hermann*, 422 F.3d 252 (5th Cir. 2005), two officers prepared and applied for a search warrant based upon possibly constitutionally infirm evidence, while two additional officers assisted in the execution of the warrant. The Fifth Circuit held, relying on *Malley v. Briggs*, 475 U.S. 335, 106 S.Ct. 1092 (1986), that though the officers who prepared the warrant might face §1983 liability, the two officers who acted to execute the warrant were entitled to rely upon the supposed constitutionality of the warrant, were not liable, and were entitled to qualified immunity.

III. PETITIONER'S CLAIM THAT SCOTT AND OTHERS STOLE PROPERTY FROM HIM WAS PROPERLY DISMISSED BY THE SIXTH CIRCUIT AND DISTRICT COURT AS BASELESS.

Petitioner has re-alleged that his personal property was stolen during his arrest. However, the District Court determined that all items on the warrant except the four coffee mugs had been returned to Rothhaupt, and more specifically that Rothhaupt had presented no evidence that Seldon Scott was in any way liable for such wrong. (App. 39.) Similarly, the Sixth Circuit Court of Appeals found that Rothhaupt had presented no evidence to support his wild allegations that he had had "hundreds of documents" and "several heirlooms" stolen, or even that the items were ever in his automobile to begin with. None of these things were listed on any inventory. (App. 12.) It is noteworthy that at no time did Rothhaupt seek leave from the District Court or the Court of Appeals to supplement the record with additional evidence of these alleged stolen items.

CONCLUSION

For the reasons set forth above, Respondents Phyllis Scott and Seldon Scott respectfully request that the Petition for a Writ of Certiorari filed by Jay Rothhaupt be denied.

Respectfully Submitted,
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